

ORIGINAL

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December 11, 2002

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: Petition for Order Declaring Mid-Rivers Telephone
Cooperative, Inc. an Incumbent Local Exchange
Carrier in Terry, MT, WC Doc. No. 02-78; Federal
State Joint Board on Universal Service, CC Doc. No.
96-45
Ex Parte Presentation

Dear Mr. Dortch:

On December 10, 2002 Gerry Anderson and I, representing Mid-Rivers Telephone Cooperative, met with Commissioner Martin and Dan Gonzales to discuss Mid Rivers' pending petition. In the course of the discussions, the attached paper was used to explain Mid-Rivers's position on the issues raised by parties in this proceeding. In addition, the attached summaries of USF payments to competitive carriers were provided.

Please contact me if there are any questions in regard to this matter. An original and one copy are provided for each docket pursuant to Section I.1206(b) of the Commission's rules.

Sincerely yours.


David Cosson

Attachments

cc: Ian Dillner
Paul Garnett
Nese Guendelsberger
Ann Stevens

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List ABOVE

December 10, 2002

MID-RIVERS TELEPHONE COOPERATIVE
SECTION 251(h) PETITION, TERRY, MT
WC DOC. NO. 02-78

Filed: February 15, 2002

Public Notice: April 19, 2002

Comments/Replies Complete: May 15, 2002

Summary:

Mid-Rivers provides ILEC and CLEC service in eastern Montana. Mid-Rivers initiated CLEC service in Terry in 1997 by constructing new outside plant, and offers a combination of modern, reliable services including DSL, Internet, ITV to the school and CLASS, together with a local presence. Ninety percent of the subscribers converted to Mid-Rivers in the first year. Approximately 97% of the 317 residence lines and 118 business lines in Terry are Mid-Rivers subscribers. Mid-Rivers has been designated an ETC in Terry. Mid-Rivers was able to obtain almost the entire subscriber base because of the superiority of its service compared to Qwest, which has long relegated Terry and other rural areas to telecommunications backwaters.

Mid-fivers should be designated the ILEC for Terry because it meets the requirements of Section 251(h)(2):

- (a) It has a comparable position in the area to the ILEC.
- (b) It has substantially replaced the ILEC
- (c) Treatment of Mid-Rivers as the ILEC is consistent with the public interest, convenience and necessity and the purposes of Section 251.

Record:

Comments in support of Mid-Rivers' Petition were filed by Rural Independent Competitive Alliance ("RICA"), the National Telecommunications Cooperative Association ("NTCA") and John Staurulakis, Inc. ("JSI"). An opposition was filed by Western Wireless Corporation. After close of the comment period, Qwest filed its comments as an *ex parte* letter seeking to delay Commission action by proposing that the Commission first conduct a Notice of Inquiry before acting on Mid-Rivers' Petition.

Issues:

- (a) **Study Area Waiver.** Western Wireless and Qwest oppose the petition and claim to be concerned that if, after grant of the petition, the Commission also allows Mid-Rivers to include Terry in its study area, then any subsequent competitive carrier seeking ETC designation in Terry would be required to serve the entire Mid-Rivers study area and would be required to make a public interest showing. In addition, the opponents

claim there could then be changes in the form of rate regulation and USF support. Qwest asserts Mid-Rivers should continue to receive the same support as Qwest.

Issues regarding the implications of a study area waiver are premature at best. There are no pending ETC requests for Terry by Western Wireless or any other carrier. Although Mid-Rivers intends to apply for a study area waiver upon grant of this petition, the petition is not contingent upon grant of such a waiver and all interested parties will have the opportunity to raise any relevant comments in the waiver proceeding. Any other ETC applicant will have the **right** to request that a different service area be designated.

Mid-Rivers believes, however, that the current rules specifying that all ETCs receive the same per line USF support are seriously flawed from a public policy perspective and are not competitively neutral. Because all ETCs are not similarly situated, the current rules result in support that is not sufficient for some ETCs, and a windfall for others. Both results are in conflict with the Act. The current reexamination of the “portability” rules should not delay action on Mid-River’s petition because Mid-Rivers’ request for ILEC designation is not conditioned upon any subsequent Commission action.

- (b) *Section 251(f) Exemption.* Western Wireless and Qwest also object that grant of ILEC status to Mid-Rivers in Terry would allow Mid-Rivers to assert its Section 251(f) exemption from the requirements of Section 251(c).

The rural exemption issue can and should be addressed in accordance with the relevant provisions of Section 251(f)(1)(B) if, and when, a competitor seeks such an interconnection. There are currently no such requests. Congress contemplated that some CLECs would supplant the incumbent and become ILECs, without any indication that such new ILECs should not be permitted if they would meet the definition of a rural telephone company.

- (c) *Area of Designation.* Qwest asserts that before acting on Mid-fivers’ petition, the Commission must decide whether the statute allows Mid-Rivers to be designated as the ILEC in Terry alone, or throughout the area in which it is designated a competitive ETC.

This issue borders on the frivolous. There is no basis in the statute for **this** assertion, nor any basis in fact. Consideration of this question would unnecessarily delay action on Mid-fivers’ petition. The prerequisites for ILEC status include substantial replacement; ETC status requires only holding out to provide the supported services.

- (d) *Status of Qwest after designation of Mid-Rivers.* Qwest claims that before it acts on Mid-Rivers' petition, the Commission must resolve the question of whether Qwest would remain an ILEC if the petition is granted.

There is no reason to conduct a separate proceeding and delay action on Mid-Rivers' petition. If the Commission determines that Qwest's status in Teny changes as a result of grant of the petition, it can so state in its decision. The Act provides Qwest an opportunity to withdraw its ETC status from Terry, to which Mid-Rivers would not object, and would consider purchase ~~of~~ Qwest's facilities

Conclusion

Mid-Rivers requests that the Commission act promptly on its petition consistent with the intent of Congress for situations in which the incumbent carrier is supplanted by a new entrant.

Approved CETC Study Areas

1Q2003			
State	Study Area Name	Rural	Total High Cost Annual
MS	Cellular South License, Inc.	N	\$23,312.66
PR	Centennial PR Operations Co	N	\$12,239.90
ND	Western Wireless	R	\$9,367.44
AZ	Smith Bagley, Inc.	R	\$9,175.60
MS	Cellular South License, Inc.	R	\$8,923.56
WA	UNITED STATES CELLULAR	R	\$6,817.60
SD	Western Wireless (Pine Ridge)	R	\$5,907.76
NV	Western Wireless	R	\$3,696.75
KS	Western Wireless (non-RTC s	R	\$3,254.94
TX	Western Wireless	R	\$3,100.63
IA	Midwest Wireless Iowa, LLC	R	\$2,964.40
WY	Western Wireless	R	\$2,822.06
NM	Western Wireless	R	\$2,215.16
WY	Western Wireless	N	\$1,246.32
CO	Northeast CO Cellular-Disagg	R	\$1,211.54
CO	Northeast Colorado Cellular. li	R	\$1,102.14
TX	Western Wireless	N	\$646.34
GU	Guam Cellular and Paging, Inc	R	\$843.93
AK	GCI - Disaggregated	R	\$743.27
MI	RFB Cellular, Inc.	R	\$634.26
WA	RCC Minnesota, Inc.	R	\$600.29
MT	Mid-Rivers Tel. Coop.	N	\$596.48
MI	RFB Cellular, Inc. - Disaggreg	R	\$589.03
NM	Smith Bagley	R	\$517.13
TX	Cumby Tel. Coop. Inc.	N	\$514.23
NY	McMetro Access Transmissio	N	\$412.12
MN	Western Wireless	R	\$378.43
TN	Ben Lomand Communications	R	\$305.92
TX	Santa Rosa Tel. Coop.	N	\$297.04
MO	Mark Twain Communications (R	\$288.69
IA	Western Wireless Corp.	R	\$267.81
WV	Highland Cellular, Inc.	N	\$231.49
WV	FiberNet, LLC	N	\$190.77
CO	Western Wireless	R	\$171.08
IA	City of Hawarden dba HITEC	R	\$124.94
OK	SAGE	N	\$106.03
IA	South Slope Cooperative	R	\$86.97
MO	ExOp of Missouri, Inc.	R	\$68.34
KS	Western Wireless - Disaggreg	R	\$62.59
IA	WAPSI Wireless, LLC	R	\$55.61
AL	Pine Belt Cellular, Inc.	N	\$45.02
IA	Heart of Iowa Communication	R	\$43.20
TX	W.T. SERVICES, INC. (WTS)	N	\$41.84
ND	HTC Services, Inc.	R	\$41.02
WY	Silver Star Tel. - WY	N	\$39.78
WA	Washington RSA No. 8 Limite	R	\$38.20
NM	Leaco Rural Telephone Coop.	R	\$35.91
IA	FOREST CITY TELECOM	R	\$33.39
IA	Coon Creek Telecommunicati	R	\$30.72
TX	XIT TELECOMMUNICATIONS	N	\$29.22
IA	Omnitel Communications	R	\$26.18
IA	Farmers & Business Men's Te	R	\$18.96
IA	MANNING MUNICIPAL COMM	R	\$12.80
IA	HARLAN MUNICIPAL UTILITI	R	\$12.80
IA	LOUISA COMMUNICATIONS	R	\$11.56
IA	TCA	R	\$8.94
IA	LOST NATION-ELWOOD	R	\$8.41
IA	INDEPENDENT NETWORKS	R	\$8.30
IA	GRUNDY CENTER COMM	R	\$7.65
IL	Diverse Communications, Inc.	R	\$7.50
MO	Fidelity Communications Servi	R	\$7.45
TX	GCEC Technologies	N	\$6.70
IA	REINBECK MUNICIPAL UTIL	R	\$5.76
MN	Western Wireless - Disaggreg	R	\$4.14
IL	ONEIDA NETWORK SERVIC	R	\$3.43
IA	LAURENS MUNICIPAL UTIL	N	\$0
IA	Iowa Wireless Services L.P.	R	\$0
IA	MAC WIRELESS, LLC	R	\$0
IA	Southeast Wireless, Inc.	R	\$0
IA	Cooperative Telephone Comp	R	\$0
IA	Olin-Morley Wireless	R	\$0
IA	Montezuma Mutual Telephone	R	\$0
IA	Sharon Telephone Company	R	\$0
IA	Wetmore Cooperative Teleph	R	\$0
IA	Northeast Iowa Telephone Co	R	\$0
IA	Community Digital Wireless, L	R	\$0
IA	South East Iowa Wireless, LLC	R	\$0
A	Cedar County PCS, LLC	R	\$0
A	Brooklyn Mutual Telephone C	R	\$0
X	Nortex Telecom, LLC	N	\$0
X	Sage Telecom of Texas, L.P.	N	\$0
IA	Eastern Sub-RSA Limited Par	R	\$0
VI	CTC COMM	R	\$0
VV	Gateway Telecom dba Stratus	N	\$0

4Q2002			
State	Study Area Name	Rural	Total High Cost Annual
MS	CELLULAR SOUTH LICENSE	N	\$29,011.380
PR	CENTENNIAL PCS UPER	N	\$9,466.104
AZ	SMITH BAGLEY	R	\$7,065.281
WA	UNITED STATES CELLULAR	R	\$6,258.744
CO	NE COLORADO CELLULAR	R	\$2,177.378
MI	RFB CELLULAR	R	\$1,115.117
GU	GUAM CELLULAR	R	\$713.436
WA	RCC HOLDINGS	R	\$583.220
SD	WESTERN WIRELESS	R	\$507.747
MT	MID-RIVERS TEL COOP	N	\$475.992
TX	CUMBYTEL	N	\$467.856
WI	CTCCOMM	R	\$414.323
NY	MCI METRO	N	\$393.148
MN	WESTERN WIRELESS	R	\$341.405
TN	BENLOMAND COMM	R	\$316.404
TX	SANTA ROSA TEL	N	\$251.256
AK	GCI	R	\$185.459
NV	WESTERN WIRELESS	R	\$176.980
NM	SMITH BAGLEY	R	\$169.993
TX	WESTERN WIRELESS	R	\$166.332
WV	FIBERNET LLC	N	\$145.740
MO	MARK TWAIN COMMUNICATI	R	\$127.886
MT	INTERBEL TEL COOP	R	\$127.476
US	WESTERN WIRELESS	R	\$110.250
IA	HAWARDEN MUNICIPAL UTI	R	\$92.700
IA	SOUTH SLOPECOOPERATI	R	\$85.776
IA	HEART OF IOWA COMM	R	\$42.900
TX	W T SERVICES INC	N	\$42.120
ND	HTC	R	\$39.816
WY	SILVER STAR TEL CO	N	\$36.924
IA	FOREST CITY TELECOM	R	\$33.312
IA	COON CREEKTELECOMMU	R	\$29.184
TX	XIT TELECOM & TECH	N	\$29.016
IA	OMNITEL COMMUNICATION	R	\$26.916
IA	F&B COMMUNICATIONS	R	\$18.924
IA	MANNING MUNICIPAL COMI	R	\$12.288
IA	LOUISA COMMUNICATIONS	R	\$12.060
ND	WESTERN WIRELESS	R	\$10.703
IA	HARLAN MUNICIPAL UTILITI	R	\$10.656
IA	LOST NATION-ELWOOD	R	\$8.496
IA	INDEPENDENT NETWORKS	R	\$8.184
IL	DIVERSE COMMUNICATION	R	\$6.744
IA	GRUNDY CENTER COMM	R	\$6.720
MO	FIDELITY COMM SVCS I	R	\$5.856
3K	SAGE	N	\$5.652
IA	REINBECK MUNICIPAL UTIL	R	\$4.260
IA	TCA	R	\$4.176
IL	ONEIDA NETWORK SERVIC	R	\$3.864
IA	LAURENS MUNICIPAL UTIL	N	\$0
TX	NORTEX TELCOM	N	\$0
TX	SAGETELECOM	N	\$0
VV	STRATUSWAVE	N	\$0
			\$61,316,135

3Q2002			
State	Study Area Name	Rural	Total High Cost Annual
MS	CELLULAR SOUTH LICENSE	R	\$27,831,228
PR	CENTENNIAL PCS OPER	N	\$15,089,856
AZ	SMITH BAGLEY	R	\$7,145,508
WA	UNITED STATES CELLULAR	R	\$6,082,808
CO	NE COLORADO CELLULAR	R	\$1,938,552
MI	RFB CELLULAR	R	\$945,972
NY	MCI METRO	N	\$651,096
MT	MID-RIVERS TEL COOP	N	\$475,668
TX	CUMBY TEL	N	\$470,568
SD	WESTERN WIRELESS	R	\$405,516
MN	WESTERN WIRELESS	R	\$340,668
TN	BENLOMAND COMM	R	\$282,864
TX	SANTA ROSA TEL	N	\$254,508
AK	GCI	R	\$170,052
WV	FIBERNET LLC	N	\$145,740
NM	SMITH BAGLEY	R	\$141,912
TX	WESTERN WIRELESS	R	\$127,944
NV	WESTERN WIRELESS	R	\$125,292
MT	INTERBEL TEL COOP	R	\$122,340
MO	MARK TWAIN COMMUNICATI	R	\$108,900
IA	HAWARDEN MUNICIPAL UTI	R	\$96,720
IA	SOUTH SLOPE COOPERATI	R	\$96,120
WI	CTC COMM	R	\$91,500
KS	WESTERN WIRELESS	R	\$89,136
IA	HEART OF IOWA COMM	R	\$56,988
IA	FOREST CITY TELECOM	R	\$43,452
IA	COON CREEK TELECOMMU	R	\$35,148
WY	SILVER STAR TEL CO	N	\$35,148
IA	OMNITEL COMMUNICATION	R	\$34,584
TX	XIT TELECOM & TECH	N	\$31,584
TX	W T SERVICES INC	N	\$29,628
IA	F&B COMMUNICATIONS	R	\$21,912
IA	MANNING MUNICIPAL COMI	R	\$14,760
IA	INDEPENDENT NETWORKS	R	\$11,004
IA	LOST NATION ELWOOD	R	\$10,056
MO	FIDELITY COMM SVCS I	R	\$9,768
IA	HARLAN MUNICIPAL UTILITI	R	\$9,024
ND	WESTERN WIRELESS	R	\$7,992
IA	GRUNDY CENTER COMM	R	\$6,732
IL	ONEIDA NETWORK SERVIC	R	\$3,780
GU	GUAMCELLULAR	R	\$0
IA	LAURENS MUNICIPAL UTIL	N	\$0
TX	NORTEX TELCOM	N	\$0
TX	SAGE TELECOM	N	\$0
VV	STRATUSWAVE	N	\$0
			\$63,591,828

Western Wireless

State	USAC Working Loops		
	1Q03	4Q02	3Q02
CO	115		
IA	2,221		
KS	11,700	235	235
MN	912	929	929
ND	45,331	18	18
NM	19,645		
NV	12,401	505	505
SD	30,108	1,440	1,440
TX	48,095	1,377	1,377
WY	6,147		
Tot	176,675	4,504	4,504